

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Victory Television Network, Inc.	)	MB Docket No. 16-416, CSR 8931-A
	)	
For Modification of the Satellite Television Market	)	
of KVTJ-DT, Jonesboro, Arkansas	)	
	)	

**ORDER**

**Adopted: April 3, 2017**

**Released: April 4, 2017**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Victory Television Network, Inc. (“Petitioner” or “VTN”), filed the above-captioned Petition seeking to modify the local satellite carriage television market of KVTJ-DT, Jonesboro, Arkansas (Facility ID No. 2784) (“KVTJ” or the “Station”), currently assigned to the Jonesboro, Arkansas Designated Market Area (“DMA”), to include the following communities in Arkansas: Crittenden County, Cross County, Mississippi County, Poinsett County, and Saint Francis County, currently assigned to the Memphis, Tennessee DMA, and the following communities in Missouri: Dunklin County and Pemiscot County, currently assigned to the Paducah, KY-Cape Girardeau, MO-Harrisburg, IL DMA (collectively, the “Satellite Communities”).<sup>1</sup> We find that VTN’s Petition is lacking in two significant areas – an engineering analysis demonstrating over-the-air coverage by the Station of the relevant Satellite Communities, and evidence demonstrating ratings/viewing patterns. The evidence submitted by VTN is not sufficient to consider the Petition, and we therefore dismiss VTN’s Petition without prejudice. We also, however, invite VTN to re-file its petition with the necessary additional evidence.<sup>2</sup>

**II. BACKGROUND**

2. Market modification provides a means for the Commission to change the local television market of a commercial television broadcast station. Broadcasters, satellite carriers, and/or county governments may request changes to the boundaries of a particular commercial broadcast television

<sup>1</sup> Petition for Special Relief of Victory Television Network, Inc., MB Docket No. 16-416 (filed December 14, 2017) (Victory Petition for Special Relief), <http://www.fcc.gov/ecfs/filing>. The Media Bureau placed the Petition on public notice on December 22, 2016. *Special Relief and Show Cause Petitions*, Public Notice, Report No. 0449 (MB Dec. 22, 2016) (*Victory Petition for Special Relief Public Notice*).

<sup>2</sup> We also invite VTN, at its discretion, to file for waiver of the filing fee if its chooses to resubmit its petition. Waivers of filing fees are granted “where good cause is shown and where waiver or deferral of the fee would promote the public interest.” These petitions are reviewed by the Managing Director of the Commission, rather than the Media Bureau. See 47 C.F.R. §§ 1.1115, 1.1119 and 1.1166.

station's local television market to include a new community located in a neighboring local market.<sup>3</sup> A television station may be carried by a satellite carrier in such a new community if the station is shown to have a local relationship to that community based on an analysis of five statutory factors.<sup>4</sup> The Commission requires that any market modification petition include specific evidence describing the station's relationship to the community at issue.<sup>5</sup> Market modification petitions that do not include the required evidence will be dismissed without prejudice and may be re-filed with additional supporting

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<sup>3</sup> A community is defined as a county for purposes of the satellite market modification rules. 47 CFR § 76.5(gg)(2).

<sup>4</sup> The five statutory factors are:

- (1) whether the station, or other stations located in the same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community;
- (2) whether the television station provides coverage or other local service to such community;
- (3) whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence;
- (4) whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
- (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.

47 U.S.C. § 338(l)(2)(B)(i)-(v) (*see also* the identical language at 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V), governing cable market modification petitions).

<sup>5</sup> The Commission's rules require that the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;
- (2) Noise-limited service contour maps delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas;
- (3) Available data on shopping and labor patterns in the local market;
- (4) Television station programming information derived from station logs or the local edition of the television guide;
- (5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings;
- (6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience information, such as station advertising and sales data or viewer contribution records; and
- (7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.

47 CFR § 76.59(b)(1)-(7) (governing both cable and satellite market modification petitions).

evidence.<sup>6</sup>

3. In its Petition, VTN states that the Cable Services Bureau previously granted a market modification request similar to the one that it is now filing. In *Agape Church, Inc.*, the Bureau added communities comprising<sup>7</sup> the Satellite Communities to KVTJ's market for purposes of a cable market modification.<sup>8</sup> VTN states that the statutory factors involved in a market modification for cable carriage are "nearly identical"*[sic]* to those for satellite carriage.<sup>9</sup> VTN asserts that the evidence presented by the Station in 1998<sup>10</sup> that led the Commission to grant its request for market modification in the cable context is equally applicable today for VTN's request in the satellite context.<sup>11</sup>

### III. DISCUSSION

4. We find that the evidence submitted by VTN is insufficient, and that it does not adhere to the evidentiary standards established in the Commission's rules. As discussed below, Petitioner needs to address these deficiencies in order for the Commission to proceed with its analysis.

5. The rules identifying the minimum evidence that must be submitted by any market modification petitioner were adopted in 1999, and the Commission has recently determined that satellite market modification petitions must meet the same evidentiary standard.<sup>12</sup> When the Cable Services Bureau granted Agape's request for a KVTJ cable market modification, the Commission had not yet adopted these rules, and the Agape petition was therefore not reviewed under the current standard.<sup>13</sup> As a result, even though the Agape petition was granted, we reject VTN's assertion that the 1998 evidentiary submission, or a simple update of that submission, provides sufficient information to allow us to grant a

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<sup>6</sup> 47 CFR § 76.59(c).

<sup>7</sup> A "community" in the cable context makes up a smaller area than in the satellite context. *Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*; MB Docket No. 15-71, Report and Order, 30 FCC Rcd at 10443-10446, paras. 54-58 (2015) (*STELAR Market Modification Report and Order*). VTN asserts that the cable communities at issue in the earlier case, when taken together, fully overlap the Satellite Communities.

<sup>8</sup> Petition at 2 (citing *Agape Church, Inc. for Modification of Station KVTJ(TV)'s ADI*, 14 FCC Rcd 2309 (1999) ("*Agape Church, Inc.*")). KVTJ is a specialty station that airs religious programming. *Id.* at 6.

<sup>9</sup> Petition at 2. Although the factors for cable and satellite market modifications are identical (see *supra* note 4), they have changed since the Bureau decided *Agape Church, Inc.* 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V); 47 U.S.C. § 338(1)(2)(B)(i)-(v).

<sup>10</sup> The 1998 petition was filed by Agape Church, Inc. (Agape), the previous permittee/licensee of KVTJ. See Petition, Exhibit C (*Agape Church, Inc.*, Petition for Special Relief, CSR 5310-A, Sept. 11, 1998).

<sup>11</sup> Petition at 2. We note that the Commission has determined that prior cable market modification determinations will not automatically apply in the satellite context and such prior decisions will not be afforded a presumption in favor of a grant. However, historic carriage is one of the five factors that must be considered in evaluating market modification requests and would carry weight in a market modification determination in the satellite context. See *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10425-26, para. 26.

<sup>12</sup> See *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421-22, para. 20.

<sup>13</sup> The decision resolving that petition, *Agape Church, Inc.*, was released by the Cable Services Bureau, a precursor to the Media Bureau, on February 3, 1999 (see specifically *Agape Church, Inc.*, 14 FCC Rcd at 2317-18 paras 28-30). The Commission's Order adopting standardized evidentiary requirements in revised 47 CFR § 76.59(b) was released on May 26, 1999. *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, CS Docket No. 95-178, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (*Cable Market Modification Second Report and Order*).

market modification in 2017.

6. In reviewing VTN's Petition as a standard satellite market modification,<sup>14</sup> we find deficiencies with regard to the second and fifth statutory factors.<sup>15</sup> With regard to the second statutory factor ("whether the television station provides coverage or other local service to such community"), VTN asserts that KVTJ places a noise-limited service contour ("NLSC") over the Satellite Communities, that the Station's over-the-air broadcast signal therefore provides local service to those communities, and that this should weigh heavily in favor of granting VTN's market modification request.<sup>16</sup> In support of its claim, VTN attaches as an exhibit a one page printout from Google Earth which purports to show KVTJ's NLSC.<sup>17</sup> We do not find this exhibit to be reliable or sufficient to meet the requirements of our evidentiary rules.<sup>18</sup> A petitioner seeking a market modification must submit detailed maps, as described in Section 76.59(b)(1)-(2) of the Commission's rules.<sup>19</sup> These maps should be based on a professional engineering analysis that support the petition's claims. VTN also asserts that in approving Agape's market modification request for cable carriage of KVTJ, the Bureau placed the greatest reliance on this second statutory factor.<sup>20</sup> If VTN suggests that we do the same here, it must provide detailed, up-to-date, information about the digital service provided by KVTJ today. We cannot rely upon KVTJ's Grade A and B contour maps, which were submitted in 1998 and defined the then-analog television station's service area, as persuasive evidence in the instant case.<sup>21</sup>

7. With regard to the fifth statutory factor ("evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community"), VTN states that KVTJ does not subscribe to the Nielsen television ratings service, but consistently receives letters and emails from its viewers in the Satellite Communities supporting the Station.<sup>22</sup> VTN also states that it receives a substantial number of donations from individuals living in the Satellite Communities.<sup>23</sup>

<sup>14</sup> In the two other satellite market modification decisions issued to date, the Bureau granted limited waivers of the standardized evidence rule. Those cases involved "orphan counties," and the Bureau was able to reach its decision without reference to the missing evidence. *La Plata County, Colorado, Petitions for Modification of the Satellite Television Markets of KDVR-TV, KCNC-TV, KMGH-TV, and KUSA-TV, Denver, Colorado*, Memorandum Opinion and Order, MB Docket No. 16-366, CSR No. 8927-A, MB Docket No. 16-367, CSR No. 8928-A, MB Docket No. 16-368, CSR No. 8929-A, MB Docket No. 16-369, CSR No. 8930-A, DA 17-204, para. 13 (Media Bureau rel. March 1, 2017); *Gray Television Licensee, LLC For Modification of the Satellite Television Market For WSAW-TV, Wausau, Wisconsin*, MB Docket No. 16-293, CSR No. 8926-A, Memorandum Opinion and Order, DA 17-74, para. 27 (MB 2017). The instant petition does not involve orphan counties, and the missing evidence is essential to our analysis of VTN's claims.

<sup>15</sup> 47 USC 338(l)(2)(B)(ii) and (v).

<sup>16</sup> Petition at 5-6.

<sup>17</sup> *Id.* at Exhibit H.

<sup>18</sup> *See supra* note 5 and 47 C.F.R. § 76.59(b)(1)-(2).

<sup>19</sup> *Id.*

<sup>20</sup> Petition at 5-6 (citing *Agape Church, Inc.* at 2317, para. 30).

<sup>21</sup> *Id.* at Exhibit C (*Agape Church, Inc.* Petition for Special Relief, CSR 5310-A, Sept. 11, 1998) and attached Exhibit 2 (Figure 3 Predicted Contours KVTJ(TV), Jonesboro, Arkansas, prepared by Lohnes and Culver, Washington, D.C., February, 1997).

<sup>22</sup> Petition at 8 and at Exhibit J.

<sup>23</sup> *Id.* at Exhibit K (Redacted Victory Television Network AR & MO Donors by Counties - Years 2011-2016).

Although “viewer contribution records” are responsive to the sixth evidentiary factor and relevant to our consideration of the fifth statutory factor,<sup>24</sup> VTN does not put its submission into sufficient context to allow us to fully evaluate its relevance, and as a result it is insufficient under our evidentiary rules. Data putting these contributions into a broader context,<sup>25</sup> or published audience data,<sup>26</sup> are necessary under our rules to properly evaluate VTN’s market modification request.

8. As we have stated, Petitions for special relief to modify satellite television markets that do not include the required evidence will be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee.<sup>27</sup> Moreover, parties may submit whatever additional evidence they deem appropriate and relevant with the supplemented Petition when it is refiled.<sup>28</sup> Petitioners may also seek waiver of any additional filing fees “where good cause is shown and where waiver or deferral of the fee would promote the public interest.”<sup>29</sup> In view of the foregoing, we dismiss VTN’s Petition without prejudice, and invite them to refile a supplemented petition that conforms to the guidance provided herein.<sup>30</sup>

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act of 1934, as amended, 47 U.S.C. §338, and Section 76.59 of the Commission’s rules, 47 C.F.R. §76.59, that the captioned petition for special relief (MB Docket No. 16-416, CSR 8931-A) filed by Victory Television Network, Inc., **IS DISMISSED WITHOUT PREJUDICE**.

10. This action is taken pursuant to authority delegated by Section 0.283, 47 C.F.R. §0.283, of the Commission’s rules.<sup>31</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Policy Division, Media Bureau

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<sup>24</sup> See *supra* note 5 and 47 C.F.R. § 76.59(b)(6).

<sup>25</sup> Useful information to add context to the data could include, for example: the number of households served in the Satellite Communities versus other served areas; the percentage of KVTJ’s unique contributors who live in the Satellite Communities; and the percentage of total KVTJ’s contributions from viewers in the Satellite Communities. It would also be helpful to break this information down by year.

<sup>26</sup> Even a limited amount of audience and viewing data, such as from a single Nielsen report, would assist the Bureau’s review.

<sup>27</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10424, para. 22.

<sup>28</sup> *Id.*

<sup>29</sup> 47 CFR § 1.1119(a); see also generally 47 CFR §§ 1.1115, 1.1119, and 1.1166.

<sup>30</sup> We therefore do not address the issue of whether the proposed carriage of KVTJ is technically and economically feasible for DIRECTV and DISH. We will address that issue if VTN chooses to supplement and refile its Petition.

<sup>31</sup> 47 C.F.R. § 0.283.